

**CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.  
WASHINGTON, D.C.**

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In the Matter of

Brendan Ercole, CFP®

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**CONSENT ORDER**

No. 2023-64582

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) and Brendan Ercole, CFP® (“Respondent”) agree that Respondent has violated CFP Board’s *Code of Ethics and Standards of Conduct* (“Code and Standards”). Respondent consents to the entry of this Consent Order and to CFP Board issuing the below listed sanction(s) against Respondent. The relevant details are set forth below in this Consent Order.

**A. FINDINGS OF FACT**

1. The Findings of Fact to which the Respondent consents are set forth below:

*a. Background Information*

i. Respondent became a CFP® professional on April 26, 2022, and has been certified since that date.

ii. Respondent has passed the (a) Series 65 – Uniform Investment Advisor Law Examination (2014); (b) Series 63 – Uniform Securities Agent State Law Examination (2019); (c) SIE – Securities Industry Essentials Examination (2020); and (d) Series 7TO – General Securities Representative Examination (2020).

iii. Respondent is currently associated with Investment Adviser A as an investment advisor representative and broker and has been associated with that firm since February 11, 2021.

*b. Respondent Entered Into a FINRA AWC*

i. On April 25, 2022, FINRA’s Department of Enforcement began conducting a formal investigation into Respondent’s conduct.

ii. On February 17, 2023, Respondent entered into a Letter of Acceptance, Waiver, and Consent (“AWC”) with FINRA. This AWC was finalized on March 13, 2023.

iii. As part of the AWC, Respondent consented to the following findings:

1. In January and February 2021, in anticipation of joining another FINRA member firm, Respondent improperly removed nonpublic personal customer information from Respondent’s Former Firm, without Respondent’s Former Firm’s or the customers’ knowledge or consent. First, in January 2021, while associated with Respondent’s Former Firm, Respondent downloaded and sent to his personal email address unencrypted documents containing the nonpublic personal information of over 200 customers, including dates of birth, driver’s license numbers, and social security numbers. Second, in January and early February 2021, while registered with Respondent’s Former Firm, Respondent saved several different types of Respondent’s Former Firm documents to a drive external to Respondent’s Former Firm. These documents also contained customer nonpublic personal information such as dates of birth and social security numbers. Respondent resigned from Respondent’s Former Firm on February 11, 2021, and joined a new firm that same day. Respondent used the customers’ nonpublic personal information he removed from Respondent’s Former Firm to populate a separate customer information database for use at his new firm.

2. In January 2021, prior to resigning from Respondent’s Former Firm, Respondent also compiled prefilled new account packets to be sent to existing Respondent’s Former Firm customers once Respondent registered with his new firm to transition the customers to the new firm. These packets included customer nonpublic personal information, including dates of birth, account numbers, social security numbers, and driver’s

license numbers. Respondent then caused these pre-filled forms to be saved on an electronic drive external to Respondent's Former Firm's secure system in January 2021. The pre-filled forms were then disseminated to customers using email or physical mail once Respondent registered with the new firm.

3. By improperly removing customers' nonpublic personal information from Respondent's Former Firm, Respondent failed to observe high standards of just and equitable principles of trade in violation of FINRA Rule 2010.

iv. FINRA imposed as a sanction:

1. a 15 business-day suspension from associating with any FINRA member in all capacities; and
2. a \$7,500 fine.

## **B. GROUNDS FOR SANCTION**

1. The Grounds for Sanction to which the Respondent consents are set forth below:

### *a. First Ground for Sanction*

i. There are grounds to sanction Respondent for a violation of Standard A.8.a of the *Code and Standards*. Standard A.8.a provides that a CFP® professional must comply with the laws, rules, and regulations governing Professional Services.

ii. Article 7.2 of the *Procedural Rules* provides that a record from a (a) federal, state, local, or foreign governmental agency, (b) self-regulatory organization, or (c) other regulatory authority imposing discipline upon Respondent ("Professional Discipline") is conclusive proof of the existence of such Professional Discipline and the facts and violations that serve as the basis for such Professional Discipline. The fact that Respondent has not admitted or denied the findings contained in the record does not affect the conclusiveness of the proof. Professional Discipline includes a censure, injunction, undertaking, order to cease and desist, fine, suspension, bar, or revocation, and the surrender of a professional license or certification in response to a regulatory action or regulatory investigation. A record of Professional Discipline includes a settlement agreement, order, consent order, and Letter of Acceptance, Waiver, and Consent ("AWC").

iii. FINRA is an industry self-regulatory authority. The AWC is a record of Professional Discipline by FINRA, and Respondent is the subject of that record. Therefore, the AWC conclusively establishes the existence of such Professional Discipline for purposes of this disciplinary proceeding and is conclusive proof of the facts and violations that serve as the basis for such Professional Discipline of Respondent.

iv. The proper maintenance and handling of a customer's nonpublic personal information is a Professional Service. The AWC is conclusive proof that Respondent improperly removed nonpublic personal customer information from his firm without the firm's or customer's knowledge and consent. By doing so, Respondent violated FINRA Rule 2010, which requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in connection with their business.

v. Therefore, there are grounds to sanction Respondent for a violation of Standard A.8.a of the *Code and Standards*.

vi. As set forth in Article 7.5 of the *Procedural Rules*, since Respondent's Professional Discipline has been conclusively proven, Respondent may not challenge the fact of the Professional Discipline and may introduce evidence only concerning an appropriate sanction resulting from the Professional Discipline. Respondent shall have the right to be heard by the Hearing Panel only on matters of rebuttal of any other evidence presented by CFP Board Counsel other than proof of Professional Discipline and the facts and violation underlying that Professional Discipline.

## **C. MITIGATING AND AGGRAVATING FACTORS**

1. Enforcement Counsel did not identify any mitigating factors relevant to this Consent Order.

2. Enforcement Counsel did not identify any aggravating factors relevant to this Consent Order.

#### D. SANCTION

1. CFP Board imposes the following sanction(s) on Respondent: **Public Censure**

#### E. PUBLICATION OF SANCTION

1. CFP Board will publish this Consent Order and a press release on CFP Board's website, and in any other form of publicity that CFP Board determines is appropriate.

2. **RESPONDENT CONSENTS TO THE PUBLICATION OF THIS PUBLIC CENSURE, A PUBLIC SANCTION, IN ACCORDANCE WITH ARTICLE 17.7 OF THE PROCEDURAL RULES.**

#### F. REQUIRED ACTIONS AFTER SANCTION

1. **Required Action After Public Censure.** Pursuant to Article 11.2 of the *Procedural Rules*, within 45 calendar days of the effective date of this Consent Order, Respondent must deliver to Enforcement Counsel, by sending an email to [discipline@cfpboard.org](mailto:discipline@cfpboard.org), written evidence that Respondent:

- a. Has advised Respondent's Firm(s), in writing, of the Public Censure in the manner set forth in Standard D.3 of the *Code and Standards*;
- b. Has advised all Clients (as Client is defined in the Glossary to the *Code and Standards*) of the Public Censure and provided all Clients the location of CFP Board's website that sets forth Respondent's disciplinary history in the manner set forth in Standard A.10 of the *Code and Standards*; and
- c. Will advise all future Clients of the location of CFP Board's website that sets forth Respondent's disciplinary history, according to Standard A.10 of the *Code and Standards*.

2. **Default for Failure to Take Required Action After Public Censure.** If Respondent fails to provide the information required by Section F of this Consent Order within the required time frame, then Enforcement Counsel may declare Respondent in default and move for an Administrative Order under Article 4.2 of the *Procedural Rules*.

#### G. PAYMENT OF DEC REVIEW FEE

1. Respondent agrees to pay the DEC Review Fee as reflected in invoice no. 3359713 within 30 days from the date on the invoice.

2. If Respondent is unable to pay the required DEC Review Fee, Respondent agrees to submit a Fee Waiver Request to CFP Board within 30 days from the date on invoice no. 3359713.

- a. If CFP Board determines that Respondent does not qualify for a fee waiver, Respondent agrees to pay the DEC Review Fee as reflected in invoice no. 3359713 within 30 days from the date of CFP Board's fee waiver determination.
- b. If CFP Board determines that Respondent qualified for a reduction of the DEC Review Fee, Respondent agrees to pay the reduced DEC Review Fee as reflected in invoice no. 3359713 within 30 days from the date of CFP Board's fee waiver determination.
- c. If CFP Board determines the Respondent qualified for a waiver of the DEC Review Fee, CFP Board will void invoice no. 3359713, and Respondent will not be responsible for the DEC Review Fee.

#### H. WAIVER OF PROCEDURAL RIGHTS

1. Pursuant to Article 8.2.a.6. of the *Procedural Rules*, Respondent specifically and voluntarily waives the following rights granted under CFP Board's *Procedural Rules*:

- a. To have the opportunity to answer the allegations contained in the Complaint in writing;
- b. To defend against the allegations in a disciplinary hearing before a hearing panel of the DEC, to have a written record of the hearing made, and to have a written decision issued;
- c. To appeal to CFP Board's Appeals Commission; and
- d. To challenge or contest any issue related to the Consent Order or the Article 17.7 publication of any public sanction in any other contractual or judicial forum, including an arbitration, in an action or proceeding in which CFP Board is a party.

2. Respondent will not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, (a) denying, directly or indirectly, any finding in the Consent Order or any statement in the Article 17.7 publication of the public sanction, or (b) creating the impression that the Consent Order or the Article 17.7 publication of the public sanction is without factual basis.

#### I. EFFECTIVE DATE OF CONSENT ORDER

1. The effective date of this Consent Order shall be the Effective Date of the Amendment to the *Terms and Conditions of Certification and Trademark License*, to which this Consent Order is attached.

#### Respondent

Date: 10/23/23

By:   
Brendan Ercole, CFP®

#### CFP Board

Date: 1/5/2024

By: s/ Darby Armont, CFP®  
Disciplinary and Ethics Commission